

REMARKS

Claims 1-53 were pending in the present application. Claims 1-15, 40-43, and 48-53 have been withdrawn by the Examiner. Claim 34 has been amended. Accordingly, claims 16-39 and 44-47 are currently under consideration. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented. Applicant reserves the right to prosecute any previously claimed or unclaimed subject matter in one or more continuation or divisional applications. Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment, encaptioned **“VERSION WITH MARKINGS TO SHOW CHANGES MADE”**.

Allowable Claims

Claims 16-33, 35-39, and 44-47 have been considered allowable by the Examiner.

Rejections under 35 U.S.C. § 112, second paragraph

Claim 34 is rejected under 35 U.S.C. § 112, second paragraph, as indefinite. In claim 34, a period has been inserted.

Applicant submits that the recitation of “about” in claim 34 is definite. One of ordinary skill in the art could readily determine the scope of the claims. The term “about” gives an approximate upper limit, which is acceptable. Applicant respectfully submits that the use of the term “about” does not render the claim using this term indefinite.

It is well established that the use of a relative term does not render a claim indefinite under 35 USC § 112, second paragraph. See Seattle Box Co. v. Industrial Crating & Packaging, Inc., 731 F.2d 818, 221 USPQ 568 (Fed. Cir. 1984) (stating that the fact that the claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite); see also U.S. Patent & Trademark Office, Manual of Patent Examining Procedure §

2173.05(b). Claims are definite where “the claims, read in light of the specification, reasonably apprise those skilled in the art and are as precise as the subject matter permits. As a matter of law, no court can demand more.” Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 1385, 231 USPQ 81, 94, 95 (Fed. Cir. 1986).

Moreover, the term “about” is accepted and widely used in patent practice and is clearly acceptable under the law. The word “about” does not have a universal meaning in patent claims; rather, its meaning depends on the technological facts of the particular case. Pall Corp. v. Micron Separations, Inc., 66 F.3d 1211, 1217-18 (Fed. Cir. 1995); see also U.S. Patent & Trademark Office, Manual of Patent Examining Procedure § 2173.05(b). “About” is neither broad nor arbitrary, but rather serves as a flexible term with a meaning similar to “approximately.” Conopco, Inc. v. May Dep’t Stores Co., 46 F.3d 1556, 1561 (Fed. Cir. 1994); see also Ex parte Eastwood, 163 USPQ 316 (Brd. App. 1968). In Hybritech, supra, the limitation “at least about 10^8 liters/mole” was found to be definite in view of the specification and the inexact nature of the subject matter. Id. Similarly, in W.L. Gore & Assoc., Inc. v. Garlock, Inc., 721 F.2d 1540, 1557 (Fed. Cir. 1983), the phrase “exceeding about” was found to be definite, and in Modine Mfg. Co. v. Int’l Trade Comm’n, 75 F.3d 1545, 37 USPQ2d 1609 (Fed. Cir. 1996), the phrase “about 0.015-0.040” was found to be definite. See Modine Mfg., 721 F.2d at 1545 (stating that “mathematical precision should not be imposed for its own sake; the patentee has the right to claim the invention in terms that would be understood by persons of skill in the art”). Further, a search of the USPTO’s web site reveals that the PTO has issued in excess of 22,000 patents between January 1996 and October 1, 2002 with the term “about” included in the claim language. The Examiner’s objection to these claim terms are not supported by case law or U.S. Patent Office practice.

Applicant submits that the use of the word “about” in claim 34 is acceptable under the law. In view of the disclosed subject matter, the specification, and the case law, it is entirely appropriate to describe the polydispersity with the word “about.” It is further noted that the

phrase “at least about” has been used in other issued patents, such as U.S. Patent No. 5,553,391 (see claim 2).

Accordingly, Applicant requests that this rejection be withdrawn.

Information Disclosure Statements

Applicant requests entry of the Information Disclosure Statement mailed to the U.S. Patent Office on October 3, 2002. Applicant requests that the submitted 1449 Form be initialed by the Examiner to make these documents of record in the present application.

Sequence Disclosures

A sequence listing is cofiled herewith in accordance with the Examiner's request.

CONCLUSION


In view of the amendments and remarks herein, allowance of the pending claims is respectfully requested.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 252312007300.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

Claim 34 has been amended as follows:

34. A composition comprising valency platform molecules of claim 16, wherein the valency platform molecules have a polydispersity less than about 1.2.